

On July 13, 2023, on a motion by Mr. Fraprie seconded by Mr. Mantoni, the Board voted 4-0 to approve these minutes.

**TOWN OF YARMOUTH
ZONING BOARD OF APPEALS
MINUTES for JUNE 22, 2023**

YARMOUTH TOWN CLERK

'23JUL19AM11:09 REC

The Yarmouth Board of Appeals met in quorum at 6:00p.m. on Thursday, June 22, 2023 in the Hearing Room at the Yarmouth Town Offices, located at 1146 Route 28, South Yarmouth, MA. The meeting was held in hybrid mode, where the public could attend in person or via Zoom.

Board Members Present and Voting: Chairman DeYoung, Mr. Martin, Mr. Fraprie, and Mr. Mantoni in-person; Mr. Igoe via Zoom; Barbara Murphy voted on Petition #5028 when Mr. Fraprie recused himself (otherwise, Ms. Murphy observed).

Staff Present: Karen Greene; Dolores Fallon

EXECUTIVE SESSION: The Yarmouth Zoning Board of Appeals will enter executive session pursuant to MGL c. 30A, s. 21(a)(3), to discuss the settlement and the change in conditions relating to Petition 4994.

A motion was made by Mr. Fraprie and seconded by Mr. Martin for the Yarmouth Zoning Board of Appeals to enter Executive Session.

On a roll call vote (5-0), the request to enter Executive Session was approved.

- Mr. Martin: AYE
- Mr. Fraprie: AYE
- Mr. Igoe: AYE
- Mr. Mantoni: AYE
- Chairman DeYoung: AYE

PETITION 5005: (continued to July 13, 2023) **Blue Sky Towers III, LLC dba BSTMA, LLC**

A motion was made by Mr. Martin and seconded by Mr. Fraprie for the Yarmouth Zoning Board of Appeals to grant the continuance to July 13, 2023.

On a voice vote (5-0), the request to continue Petition 5005 to July 13, 2023 was approved.

PETITION 5028: **Andrew and Cynthia Laird. Property Location: 185 South Sea Avenue, West Yarmouth, MA. Map & Lot #: 17.101.1. Zoning District: R-25.** The Applicant seeks a Special Permit per §104.4 to convert two existing units into a condominium form of ownership.

Attorney Paul Tardif represented the petitioners and provided an overview. Attorney Tardif said there was waiver from Site Plan Review from Building Commissioner Mark Grylls pursuant to §104.1.1.

The property is located in the R-25 zoning district and is improved with two 2-story structures: the front building containing 4 bedrooms and the rear building having one bedroom. The lot

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consists of 50,049 square feet, and the structures were built in approximately 1880. There are no changes proposed to the structures or the property.

The proposal is to create a two-unit condominium pursuant to §104.4. Both the proposed Condominium Declaration of Trust and the Crowell Heritage Condominium Master Deed were submitted with the application.

There is no change of use.

Board Questions:

Mr. Igoe: No questions.

Mr. Mantoni: The existing buildings will stay within the same footprint. Just changing the type of ownership?

Attorney Tardif: That's it.

Ms. Murphy: No questions.

Mr. Martin: No issue with it.

Chairman DeYoung: Is there a place you can point me to on the Master Deed and the Declaration of Trust as to the management? Which paragraph?

Attorney Tardif: Septic system management is in Article 5, Section 1(n) of the Declaration of Trust. [Page 21 of the PDF]

Chairman DeYoung asks Attorney Tardif to read the paragraph into the record:

Section 1. Powers and Duties of the Trustees. The Trustees do have the power to: Make arrangements for the maintenance, repair, upkeep and, if necessary, replacement of the septic systems servicing each unit specifically including the pumping out of the same at least every third year.

No Public Comments.

Board Discussion and Deliberation:

Mr. Martin: Two existing houses going into condominium ownership. No problem with the application.

Mr. Igoe: I agree. I think they meet the criteria under §104.1.1 and have covered the requirements.

Mr. Mantoni: No issues.

Ms. Murphy: No issues.

Chairman DeYoung: No issues.

Vote:

A motion was made by Mr. Igoe and seconded by Mr. Mantoni to approve the Special Permit as requested.

On a roll call vote (5-0), the request for a Special Permit was approved.

- Ms. Murphy: AYE
- Mr. Mantoni: AYE
- Mr. Martin: AYE

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- Mr. Igoe: AYE
- Chairman DeYoung: AYE

Attorney Tardif to provide a draft decision.

PETITION 5029: Thomas J. Ruhan and Thomas A. Rockwell, Trustees of the James F. Ruhan 2012 Irrevocable Trust, 168 South Street, South Yarmouth, MA. Map & Lot #: 34.297. Zoning District: RS-40. The Applicant seeks a Special Permit per §202.5 Footnote 5 to remove the existing, detached one-car garage and construct a detached two-car garage, for a total of 6 garage bays on site.

Petitioner Tom Ruhan was present with Attorney Paul Tardif who represented the petitioners. Attorney Tardif provided an overview.

The property is in the RS-40 zoning district and is improved with a 1 ½ story, 5-bedroom home, with an attached 2-car garage, a detached accessory garage for 2 cars, and a detached accessory garage for one car. The home was built in approximately 1973, but it replaced another structure on the site. Zoning Decision 520, attached to the application, references the existence of a 2-story home on the lot in at least 1960. The 2-car garage was on the property prior to the house being built in 1973, and was moved from a property on River Street in the 1960s. The one-car garage dates back with the old house that was torn down.

The property contains approximately 1.08 acres, with approximately 120 feet of frontage on South Street, 132 feet along the Bass River, and is approximately 375 feet deep. The existing home complies with the front and rear setbacks, as well as the right side setback. It encroaches into the left side setback by 1 foot. We're not doing anything with the house today.

The two-car garage is only 4.8 feet from the left side setback, but has been there for approximately 60 years. No changes to that building. The one-car garage meets all setbacks; it's centrally located in the middle of the lot. The current lot coverage is 9.6% (maximum is 25%).

The proposal is to raze the one car garage and replace it with a new garage measuring 40 feet by 28 feet, which will primarily house Mr. Ruhan's boat. The new garage will increase the number of garage bays from 5 to 6. The new addition will meet all the current setback requirements for the zoning district, and will provide additional storage for Mr. Ruhan and his family. The lot coverage will increase to 11.5%, which is significant for a number of reasons. The sheer size of the lot on the river, makes the increase from 5 bays to 6 bays de minimis. The structures are so far from River Street and shielded by dense vegetation, that you can barely see the structures from the road. There is a history of multiple bays on this lot without incident. It's not a mechanic shop; it's a storage area for Mr. Ruhan's vehicles, boat, yard items, such as mowers.

Looking under Use Q-2, other accessory uses customarily incidental to any of the above permitted uses. Footnote 5 on that use is: except a Special Permit for garage space for storage of more than 3 vehicles.

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All access will be from the same driveway on a very large lot. The existing 5 bays are unnoticeable and have been for dozens of years. The driveway for the new garage will be pointed toward South Street, with any headlights shining into the garage and not toward anyone's home. This Board provided similar relief in 2016 for 6 bays ([Petition 4676: Daniel Dumont, 427 North Dennis Road, Yarmouth Port](#)). For Petition 4676, it was a 34x36 two-car detached garage; the lot was ~6,500 feet less than this one; the lot backed up to Conservation land. In this case, this lot is bigger and backs up to the Bass River.

Board Questions:

Mr. Martin: Little concerned about 6 bays and a whole new building. The lot is private and set back. As long as there's no neighborhood opposition.

Mr. Fraprie: The upstairs will just be used for storage and not living space?

Attorney Tardif: Just storage and a condition to that effect would not be a problem.

Mr. Mantoni: You can't see it from the road. This is just for one boat?

Mr. Ruhan: Boat, workshop, one vintage car, tractor. No pavement; it will be grass all around it. There's not going to be a driveway up to it.

Mr. Igoe: It will fit nicely on the lot. It's set back from the street. With these garages that have more than 2 bays, we look at it on a case-by-case basis. We granted similar relief to a house on Thacher Shore Road in Yarmouth Port. This one won't be more detrimental to the neighborhood.

Chairman DeYoung: The petition that you referenced is not precedential to this matter at all. That backed up to Conservation land. Had a two-car garage in back and a two-car garage underneath the house and they were going to construct a new two-car garage, so from the streetscape, I would see one garage and a house. Concerns about others coming to the Board and wanting 6 garage bays.

No Public Comments.

Board Discussion and Deliberation:

Mr. Fraprie: Very private lot. Set back and screening on both sides. There is a building there already. I think it's reasonable; it's a very large lot.

Mr. Martin: The site is different enough and large enough and private enough. There are other older houses on the river that have multiple garages.

Mr. Mantoni: It's private, a large lot, and you can't see it from the road. I do see your concern of this snowballing.

Mr. Igoe: I do appreciate your comments, Mr. Chairman. What makes this different is that this lot already has 5 existing bays and they're asking for one more, raze/replace an existing building. I always look at [petitions] on a case-by-case basis. I would consider it for a big piece of property on dry upland and in keeping with the neighborhood. I think they meet the criteria of the bylaw.

Chairman DeYoung: I'm being persuaded by what I hear [from the other Board Members]. Its distance off South Street and the screening that's naturally there. Looking at the plans, it looks more like a boathouse than a garage. You understand there would be a condition of no living space on the second floor?

Mr. Ruhan: I understand.

Chairman DeYoung: Is it your intention to putting running water out there [in the garage]?

Attorney Tardif: Probably a slop sink on the first floor of the garage; it's a workshop.

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Chairman DeYoung: I wouldn't come back and ask for an in-law apartment up there.

Vote:

A motion was made by Mr. Igoe, seconded by Mr. Martin, to approve the Special Permit with the following condition: The space above the new garage bays will be used for storage and not for living space.

On a roll call vote (5-0), the request for a Special Permit, with the stated condition, was approved.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

Attorney Tardif to provide a draft decision.

PETITION 5031: JDB 212 Mid-Tech Drive, LLC, Jeffrey Bilezikian, Manager. Property Location: 186-212 Mid-Tech Drive, West Yarmouth, MA. Map & Lot #: 84.12 Zoning District: B-3/APD.

Attorney John Kenney requested a continuance via letter on June 20, 2023 to amend the application with a required Special Permit.

A motion was made by Mr. Fraprie and seconded by Mr. Martin to grant the continuance to July 27, 2023.

On a voice vote (5-0), the request to continue Petition 5031 to July 27, 2023 was approved.

Applicant signed an extension agreement to July 27, 2023 hearing.

PETITION 5034: Coastal Medical Transportation Services LLC, Property Location: 0 Forsyth Avenue, South Yarmouth, MA. Map & Lot #: 88.94. Zoning District: B-1 and APD. The Applicant seeks to reverse the decision of the Building Commissioner and/or a Special Permit per §202.5 F6 and/or Variance from §202.5 for F-2 use in the B-1 zoning district to construct a new building on a portion of the lot, with office space and a transportation service building, for non-emergency ambulance service.

Petitioner Alex Theoharidis, CEO, Coastal Medical Transportation Systems (the potential buyer of the lot), was present with Attorney Paul Tardif who represented the petitioner. Also present at the hearing with the petitioner: Richard Quirk, Executive Vice President, Fleet and Facilities, Coastal Medical Transportation Services; John Lavelle, Senior Engineer, Baxter Nye Engineering and Surveying.

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Attorney Tardif provided an overview: You can get to the property at 0 Forsythe Avenue from Station Avenue or Old Townhouse Road. The property is located in the B-1 zoning district, as well as the Aquifer Protection District, and is an unimproved lot containing 3.32 acres. The lot appears on a plan recorded in 1972 in the Registry of Deeds and has 278 feet of frontage on Old Townhouse Road. Due to the size of this lot, it was the applicant's decision to develop only the 1.7 acres located closest to Old Townhouse Road, leaving the remaining 1.6 acres, with frontage on Forsyth Avenue, undeveloped for the time being. petitioner seeks to construct a building on the site which will house its offices and an indoor parking area for up to 21 ambulance vehicles. The proposed building complies with all of the bulk requirements of the zoning bylaw, including all setbacks, height, lot coverage, buffers, parking, and in-lot trees. The only relief needed in this case pertains to the use of the property.

Coastal is the only non-emergency medical transportation service on Cape Cod, Nantucket, and Martha's Vineyard, providing these services to nursing homes, hospitals, healthcare facilities, and patients needing transportation to and from home for doctors' offices or for transportation between medical facilities. Coastal plans to store ambulances inside the building, as is required by law, when they are not in use. When crews are on-shift the vehicles are out on the road doing transports or staged at nearby healthcare facilities. Wheelchair vans would be parked in the parking lot, on the overnights, between 4pm and 5am, when not in use. The location would also be used for its corporate offices and dispatch center. Coastal does not perform any of its own maintenance on the vehicles, so none of that would be done on-site. Household products and quantities are stored only, and the applicant has secured the Hazardous Waste waiver from the Board of Health to operate in the Aquifer Protection District, so no relief is needed there. The uses are limited to the storage of vehicles and office space.

As indicated, the petitioner has applied for three forms of relief, each independent of the other. Specifically, the applicant is seeking to overturn the Decision of the Building Commissioner dated April 20, 2023 which classified its use in the Zoning Bylaw as F2 "Local & commuter passenger transportation terminal (inc. bus, cab, rail & other transportation)". Second, the petitioner is seeking a Variance to allow the F2 Use to be conducted at the site. Finally, the applicant is seeking a Special Permit pursuant to Yarmouth Zoning Bylaw Section 202.1 and 102.2.3.

It is the petitioner's position that the Building Commissioner incorrectly classified the use as an F-2 Use which is a local and commuter passenger transportation terminal, which includes bus, cab, rail, and other transportation.

The petitioner states that first and foremost use is office use which is O-4 or O-8 and an F-6 use which is transportation services. The North American Industry Classification System (NAICS), the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy, and upon which the Yarmouth Building Commissioner relies.

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Most of the building will be used for office space and the dispatch center. Very quiet. The rest of the building will be used for parking. It's a non-emergency ambulance service that is scheduled, called, and dispatched. They would be leaving the site as any other vehicle. No lights and sirens.

The petitioner stated that the proposed use of the property by Coastal does not fit squarely in either the F2 or F6 uses.

Regarding requesting relief pursuant to Bylaw Section 202 (Use Regulations), which states that, as in this case, "if a use is not specifically allowed, by right or special permit, it shall be considered to be not allowed unless an appeal is taken under section 102.2.3 and it is shown beyond a reasonable doubt to be of similar nature and at least no more noxious nor detrimental to the welfare of the neighborhood than a specifically allowed use." Being in the B-1 zoning district, allowed uses include restaurants, retail stores including convenience stores, banks, funeral homes, repair shops, doctors and lawyers' offices, schools, and churches.

Board Questions:

Mr. Igoe: Are you suggesting this is allowed under F-6?

Attorney Tardif: We more readily fit into F-6 rather than F-2. Under §202, you don't need to determine the use classification. You have to look at the proposed activity and if you find that it is not as noxious or detrimental to the welfare of the neighborhood than an allowed use would be, you can grant this use.

Mr. Igoe: But that's "beyond a reasonable doubt". F-6 says "Yes" in the Use Table, then it has footnotes 2, 4, and 18. Can you speak to those?

Attorney Tardif: It would be "yes" only when the bulk of display and sales are conducted within a building doesn't apply and the others don't apply. If 2, 4, and 18 apply, you have to comply with them.

Mr. Igoe: When I see "Yes" it's an allowed use by right. How would you qualify as a Special Permit?

Attorney Tardif: Under §202.1, if our use isn't allowed by right or Special Permit, it shall be considered to not be allowed, unless an Appeal is taken under §102.2.3 and it is shown beyond a reasonable doubt to be of similar nature and at least no more noxious or detrimental to the welfare of the neighborhood than an allowed use. In the B-1 zoning district, allowed uses would include restaurants and retail stores. Coastal's use would be less intensive than an allowed use.

Mr. Igoe: For the F-2 use, you would need a Variance, correct?

Attorney Tardif: That's correct.

Mr. Igoe: Do you think you meet the Variance criteria?

Attorney Tardif: I do.

Mr. Mantoni: Are you operating 24 hours a day?

Mr. Theoharidis: We do serve the Cape 24 hours a day. Employees are always on the road and posted outside of healthcare facilities. It's all pre-scheduled. The majority is during the day. A patient may go to Cape Cod Hospital and be stabilized, then they need transportation to a Boston city hospital for a higher level of care; that's the majority of what we do.

Mr. Mantoni: It seems to be more F-6 than F-2.

Mr. Fraprie: Under F-6, Footnote 18, it does say except Board of Appeals for any new building. This would be a new building.

Attorney Tardif: Any new building over 10,000 square feet. This is 9,700/9,800 square feet.

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Mr. Fraprie: What about Mr. Grylls' [Building Commissioner] comment that this is more special needs transportation use?

Attorney Tardif: I think he went there after he dismissed the ambulance service. The uses don't take place on this lot; they take place elsewhere. What's performed on the lot are office, dispatch, and the parking of vehicles. The catchall would be transportation services.

Mr. Fraprie: Discuss where the Special Permit fits. Otherwise, it's a Variance and a B-1.

Attorney Tardif: B-1 requires 25,000 square feet instead of 20,000 square feet in B-2 and B-3. You really can't do anything with that lot with allowed uses. A restaurant: It's not something you would see when you drive by; you'd have to look down the street to see a sign. This is a passive use for this property.

Mr. Fraprie: Why go out to Station Avenue vs. the Forsyth traffic circle?

Attorney Tardif: The lot is 3.23 acres. We'll cut it in half and only use the front portion of it. The back portion will be accessed eventually, but right now, there's no intention to do anything over there.

Chairman DeYoung: Has it been subdivided?

Attorney Tardif: Not yet.

Mr. Martin: I have trouble calling this a "terminal". Relevant to the Site Plan, the neighbors are concerned about it. Leaving a 20-foot buffer on Nightingale Road, then a swale for drainage?

Attorney Tardif: It will be quite a distance from houses. We'll "green it up".

Mr. Martin: Why put in 7 white oak trees in the front? Existing is heavily wooded there. The trees that are there should stay there.

Attorney Tardif [reads the note at the bottom of the plan]: Save existing trees to the extent possible and in-fill with up to 10 white pines at 20 foot on center.

Mr. Martin: As soon as we see that sometimes, the next thing I know, everything's mowed down, and we're planting little trees that die. The same goes for the back area that's not being used at this time; that should remain wooded, until such time that some other entity goes in there.

Attorney Tardif: It's 116 feet from the back boundary of those residential neighbors to the corner of the building. In between is parking, swale, vegetation, including in-lot trees.

Mr. Martin: And as Mr. Mantoni said, no sirens?

Attorney Tardif: No.

Mr. Fraprie: What about backing up?

Mr. Theoharidis: There's a shut-off switch for all alarms for that reason.

Chairman DeYoung: I can't pigeon-hole this into any use. The closest would be F-6 and that's not on point. There'll be no vehicle washing or servicing?

Mr. Theoharidis: No.

Chairman DeYoung: No medical care performed on-site?

Mr. Theoharidis: No.

Chairman DeYoung: Are there ever occasions when your services require an ambulance to use its siren and flashing lights?

Mr. Theoharidis: Unless there was a mass casualty event or a municipality called us in for backup, which the whole Cape would be responding to. Other than that, everything we do on Cape Cod is non-emergency. Fire departments have their own ambulances. We are not part of the 9-1-1 system on Cape Cod.

Chairman DeYoung: How many units would be parked there at all hours?

Mr. Theoharidis: The plan calls for 21.

Chairman DeYoung: Does that include employee parking?

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Mr. Theoharidis: The ambulances (21) are inside the building. Employee parking (26) is outside.

Chairman DeYoung reads correspondence into the record:

- **Letter of Support:** Yarmouth Police Chief, Kevin Lennon
- **Letter of Opposition:** Boris Eibelman, 91 Nightingale Drive
- **Email from Building Commissioner:** Mark Grylls with views on the use classification

In-Person Public Comments:

In Favor

- Richard Quirk, Yarmouth resident & Coastal Medical employee
- John Fallon, Horse Pond Road
- Tom Murphy, Yarmouth resident
- Ross Jolly, 56 Cottonwood Street, the person who has the lot for sale.

In Opposition

- Stephen Kenney, 87 Nightingale Drive
- Austen Rumberger, 71 Nightingale Drive
- Susan Jimerson, 75 Nightingale Drive
- Mary Rodrigues, 80 Nightingale Drive

Board Discussion and Deliberation:

Mr. Fraprie: This is a B-1 district and this proposal seems to make sense for that area. It's a reasonable request. Instead of a chain link fence, I would ask that they put a fence on the property that faces Nightingale.

Attorney Tardif: There are a couple of stockade fences that the neighbor owns, but that's something we can do.

Mr. Fraprie: The business doesn't sound like a "noisy" organization, but it is 24-hour. A fence that could block any light coming in or noise being made.

Mr. Martin: All existing trees in that buffer and in front of the building need to remain to help the neighbors. I agree with Mr. Fraprie that a 6-foot-high vinyl fence will help with noise impact. The buffer and fence offer more protection than a grocery store that's allowed in the B-1 zone. I agree with the Chairman about §202.

Mr. Igoe: It's a B-1 district backing up to a residential district. Want to mitigate it as much as you can. It's scheduled appointments. I agree we should proceed under §202.

Chairman DeYoung: Difficult balancing act with residential neighborhoods and business zones in Yarmouth. In terms of what's not developed, what's not on Route 28, is almost nonexistent. How many employees are there?

Mr. Theoharidis: 1,000 across the state and 300 on the Cape and Islands.

Chairman DeYoung: While we can't enforce it, other than through requirements to the parcel of land that you're intending to improve, you're in the driver's seat for keeping complaints down. Tell your people to "be good". Set up a company policy, maybe that they can't go down that road faster than 20 miles per hour. While we can't impose that condition, you can. In that sense, be understanding that there is a public that needs not only the protection afforded by an ambulance ride, but also the protection from those ambulances.

On July 13, 2023, on a motion by Mr. Fraprie seconded by Mr. Mantoni, the Board voted 4-0 to approve these minutes.

Vote:

A motion was made by Mr. Martin, seconded by Mr. Mantoni, to approve the Special Permit with the following conditions:

1. A 6-foot-high fence will be constructed along the easterly boundary of the petitioner's property to be used for this project, which abuts the rear of residential abutters; and
2. No sirens would be utilized leaving or entering the property.

On a roll call vote (5-0), the request for a Special Permit, with the stated condition, was approved.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

Attorney Tardif to provide a draft decision.

The petitioner requested to withdraw, without prejudice, the Request to Overturn the Decision of the Building Commissioner and the request for a Variance.

A motion was made by Mr. Martin, seconded by Mr. Fraprie, to approve the request to withdraw the remaining forms of relief requested.

On a roll call vote (5-0), the request to withdraw the remaining forms of relief, was approved.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

Chairman DeYoung requests a 10-minute break.

PETITION 5019: (continued from 05/11/23 & 05/25/23) **Maria Curtis dba Lightning Speed Go-Karts. Property Location: 228 Route 28, West Yarmouth, MA. Map & Lot #: 37.148. Zoning District: B-2.** The Applicant seeks a Special Permit per §301.2 from buffer trees requirement and/or allow N11 use in B-2 zoning district to install a seasonal go-kart racetrack.

Petitioner Maria Curtis was present with Kieran Healy, BSC Group, and Bradley Dunkin, Associate Principal Consultant, Cavanaugh Tocci (sound consultants), who represented the petitioner.

Mr. Healy briefly reviewed the items requested by the Board at the May 11, 2023 hearing, such as a sketch of the tent's interior, second layer of fencing, additional parking, and pedestrian aisle.

Mr. Dunkin was engaged to conduct a noise study and summarized the main points:

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Our work focused on the effects of the guests at the Sunbird Resort next door, including researching code requirements for the Town of Yarmouth (there are no specific limits on sound; it's a nuisance code that applies from 11pm-7am). The facility will only operate between 10am-10pm in the peak season.

Background sound measurement to establish the existing noise levels due to sound, mostly from Route 28; a 10-minute measurement without any activity on the site to determine those levels. Measurements of the go-karts driving around the track (or the parking lot as it currently is) to establish the source sound levels of the two different kart types (Rimo; Bowman). Measurements near the property line of the Sunbird Resort. These measurements were used as inputs for calculations and modeling to determine the expected effects.

The propagation of the sound from the kart to the resort would involve a couple of sound barriers: a 4-foot masonry wall proposed [by the petitioner] and a vinyl fence built by the resort. The expected sound levels at the façade of the resort units would be comparable to the sound levels from the road, with the proviso that this was only measured at a specific time and a specific place. It wasn't at nighttime when traffic levels could possibly be lower or traffic could be moving slower at other times.

Mr. Mantoni: What time did you do it?

Mr. Dunkin: Around 3pm in the afternoon.

In addition to the sound levels at the façade of the resort units, we estimated that the sound would be propagated inside these units due to conditions of open or closed windows, and determined these levels would be quite low and would likely be lower than the background sound that exists in these units due to activity of the occupants and ventilation & cooling units during the peak season.

In addition to the 4-foot masonry wall proposed [by the petitioner], the operators of this facility are also expecting to muffle the exhausts of one of the kart types (the measurements were done without any controls on the exhausts or the throttles on the karts). We would expect the karts to be quieter than we measured.

Based on the measurements and the expected controls [proposed by the petitioner], I don't expect that there would be a disturbance to guests inside the Sunbird Resort units.

Board Questions:

Chairman DeYoung: Are you aware that your report has been critiqued?

Mr. Dunkin: I am.

Mr. Mantoni: How accurate can we assume these reports are? In other words, if someone else conducted a sound test at the same time on the same day could they have a different reading?

Mr. Dunkin: I would not expect so. We use standard instrumentation. As long as the sound source is the same and is measured in the same location, the measurements would be the same.

On July 13, 2023, on a motion by Mr. Fraprie seconded by Mr. Mantoni, the Board voted 4-0 to approve these minutes.

Mr. Mantoni: The figure with the decibels. I've seen these online and they're all over the place; not one of them is consistent. How do we know who to believe regarding the actual noise level?

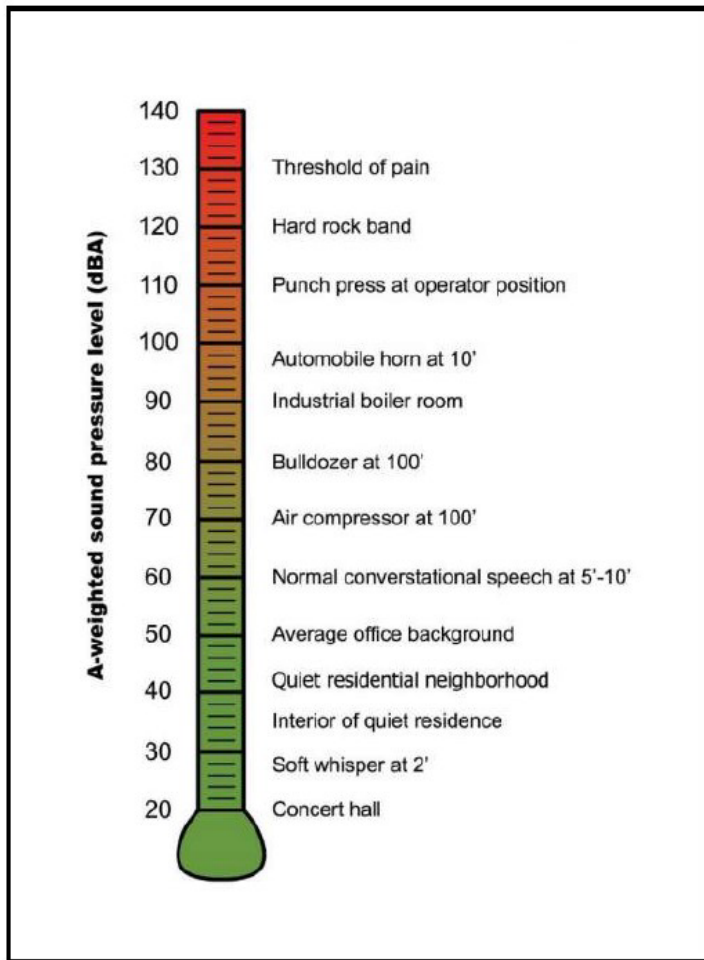


Figure A-1

Typical Sound Levels for Common Interior and Environmental Sources

Mr. Dunkin: The noise levels are references for familiar sounds and how they relate to the sound levels discussed in the report. The measurements themselves are objective. Standard instruments and standard practices for performing these measurements. The consultant who provided the critique of the report has not done the measurements. The critique is based on our measured levels and his calculations based on those levels. I expect that if he did a full analysis that included the mitigation elements (masonry wall & fence) that we included in the analysis, that he would get very similar levels. In fact, the number that he provided of 63 decibels was exactly what I measured at the property line without the masonry wall there. His calculations are consistent with what I measured at the property line. I recognize other areas of concern with his critique, but I think that based on the standard measurements and the standard calculations, would be very similar between his and our analysis.

Chairman DeYoung: How does the word “cursory” fit into a scientific report?

Mr. Dunkin: The report was done quickly so we could get it before the Board for this meeting.

Chairman DeYoung: Do you believe it was done with a scientific methodology?

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Mr. Dunkin: I do believe that. I think that the main concern of the critique as well as additional work that we would perform for a more thorough analysis would be a full week of background monitoring. This is something to help establish a background level at all hours of the day throughout the week. Something we would normally do if we had enough time. In this case, it was something that we decided to omit because the interest was finding the sound levels at the resort units. What is left out is how that relates to background sound: the sound that exists in the environment without the sound that's being introduced by this facility.

Chairman DeYoung: In your calculations and your considerations of abatement, were you considering abatement of both types of go-karts? [Rimo and Bowman]

Mr. Dunkin: No, it's only the louder type of go-kart. [Bowman]

Chairman DeYoung: How many karts were you running at a time as you did these calculations?

Mr. Dunkin: We were running 3 karts at a time.

Chairman DeYoung: Were you running them sitting there at a standstill or running around a track of some sort?

Mr. Dunkin: Running around the pavement where the track is going to go.

Chairman DeYoung: You put some emphasis on this [solid] wall. Are you aware that there's no wall planned for the rear of the track area?

Mr. Dunkin: I am.

Chairman DeYoung: Did you give any consideration to the noise level that would be heard in the abutting residential zone?

Mr. Dunkin: We were not asked to do that. We were focusing on the resort facility. However, the distance to these houses is about 4 times the distance as to the resort.

Chairman DeYoung: I'm not asking for a reason why. I'm just asking if you gave it consideration. The answer is "no", right?

Mr. Dunkin: Yes.

Mr. Fraprie: Trying to understand the difference between the ambient noise and the noise at the property lines. Like to have seen all locations, but it's only measured at one: the Sunbird resort. What was the difference when you ran the karts?

Mr. Dunkin: I don't think I included the property line measurement numbers in the report, but it was 63 decibels and the background levels that we measured were in the range of 50-60 decibels.

Mr. Fraprie: So, the difference is 3-13 decibels for 3 karts?

Mr. Dunkin: Right.

Mr. Fraprie: Outside the units?

Mr. Dunkin: It was on this facility's side of the vinyl fence.

Mr. Fraprie: Our ordinance says a "nuisance". What amount of sound creates a "nuisance". Lawnmowers running all day in my neighborhood and it drives you crazy. I've heard these go-karts described as "like a lawnmower". The state regulation recommends not exceeding 10 decibels at the property lines during the day and 5 decibels at night. Have you come across anything like that in your studies in the past?

Mr. Dunkin: Yes, that is the Mass DEP requirement that a "new sound source" not be more than 10 decibels above the existing background sound levels. In our measurements, we found that the additional sound on the resort side of the fence would be below the background levels that were measured for that time of day.

Mr. Fraprie: I can't assume that people are going to be inside all the time. There are playgrounds at the Sunbird. I know it's a long way, but it would have been nice to hear it from all directions vs. just Route 28. I have some concerns on the difference from what I've seen in state guidelines.

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Mr. Martin: The 75 and 81 decibels from the Rimo and Bowman go-karts were measured at a distance of 20 feet?

Mr. Dunkin: Yes.

Mr. Martin: I still have some of the same concerns for the resort, the people across the street, and the people in the condos. I still don't know how noisy until such time as I was sitting there and they [the go-karts] were all running on a still night.

Mr. Igoe: In your report, you're trying to achieve a decibel level of 50. Is that correct?

Mr. Dunkin: Yeah.

Mr. Igoe: The assumption is that you can achieve this by a 4-foot concrete wall, a fence on the property line, and noise reduction mufflers put on the machines. Is that correct?

Mr. Dunkin: That's correct.

Mr. Igoe: But this is all an assumption because you don't have any scientific data.

Mr. Dunkin: We don't have any data on the mufflers or the throttle reduction. That's correct.

Mr. Igoe: I don't mean to be rude, but isn't this report just speculation? After the measurement at Route 28, it's all assumptions and presumptions, isn't it?

Mr. Dunkin: It's standard measurement methods and standard propagation calculations. That's solid science as far as the existing sound of the karts and the effect of the wall and the fence. We aren't speculating on the effect of the mufflers; we're saying if the mufflers do achieve a 6-decibel reduction, then we would expect a level of 50 at the façade of the resort.

Mr. Igoe: Under your theory, that if these things all took place, then the noise level would be reduced to that of a normal conversation between two people?

Mr. Dunkin: That's right.

Chairman DeYoung: I'm assuming that you are offering your testimony here tonight because you recognize yourself as a trained person in the science of noise, is that fair to say?

Mr. Dunkin: Yes.

Chairman DeYoung: Have you ever testified in Court as an expert?

Mr. Dunkin: Not in Court, no.

Chairman DeYoung: Before any administrative body before this?

Mr. Dunkin: I've spoken with other zoning boards.

Chairman DeYoung: I'm somewhat surprised, without any comments from anybody else, when I read the report earlier this week. I couldn't quite understand how the words "cursory evaluation" can fit into a report you're trying to offer as a scientific document. Secondly, I don't see things I would want to see in here, which is adding in the sound of children at play, motor vehicles coming in and out of the parking lot, while we have an ambient sound of 50-56 decibels. How long did this take?

Mr. Dunkin: The background measurement was taken over a period of 10 minutes.

Chairman DeYoung: How long to gather the information to prepare this report?

Mr. Dunkin: About an hour and a half.

Chairman DeYoung: Was 3pm chosen for any particular reason?

Mr. Dunkin: Not in terms of measuring the ambient sound.

Chairman DeYoung: If you really wanted to know what it was, wouldn't you have a sound meter that took the sound levels between the hours of operation: 10am-10pm? Do you endorse that variations should be 10 decibels or less at the site of the sound vs. ambient noise outside the perimeter?

Mr. Dunkin: That was referencing Mass DEP regulation that given an ambient background level, a new sound source cannot increase the sound at a receiving property by more than 10 decibels.

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However, Mass DEP has clarified that this applies only to residential receptors. This is a commercial receptor.

Chairman DeYoung: What are you calling a “commercial receptor”? The building next door that’s housing residential units? Because the rooms are rented, that makes it a “commercial receptor”?

Mr. Dunkin: Yes.

Chairman DeYoung: In terms of the reported sound levels based upon 3 karts, would 8 karts running at full throttle cause any change in the 75 decibels for a Rimo and the 81 decibels for a Bowman?

Mr. Dunkin: It wouldn’t change the maximum levels. That would typically happen when a single kart is accelerating, so you would have the same maximum level, regardless of how many karts were operating. It would increase the average level because when they’re not accelerating, they’re still generating noise, and those would add up. Increasing from 3 karts to 8 karts would increase the average sound level by about 4 decibels.

Chairman DeYoung: What about adding in the sound of “children at play”?

Mr. Dunkin: I can’t speak to that.

Chairman DeYoung: How about cars traveling in/out of the parking area?

Mr. Dunkin: That would be at low speed and it would be blocked by the fence. The sound due to those cars would occur at the ground level where the sound is created by the tires. It would be effectively blocked by the fence.

Chairman DeYoung: Unless they came in with loud mufflers, right?

Mr. Dunkin: Right, yeah.

Chairman DeYoung: I’m not here to poke holes in your report. I believe it truly is well-described as a “cursory” report instead of an accurate reflection of what are the noise levels going to be.

Did you give any consideration to an 8-foot wall?

Mr. Dunkin: We have the 4-foot wall and the fence combined. Increasing the height of the wall does not substantially add to the reduction of sound. As far as extending the wall around the back of the facility, the distance to any receptors is great enough that it wasn’t really a concern. It was mainly the cottage units right on the property line.

Chairman DeYoung: Because of the distance to the residential units to the rear?

Mr. Dunkin: Right.

Chairman DeYoung: I’m not suggesting children shouldn’t make noise at play. Look at the Inflatable Park, neighbors said, “We can’t have that noise of children at play.” But the hours were limited. They certainly weren’t going at 10pm. If they came in and asked for that, I speculate I wouldn’t agree to it, and I’m speculating that I’m having a hard time agreeing to it here. You’ve read and considered the comments by your competitor?

Mr. Dunkin: Yes.

Chairman DeYoung: Were there any merits to those comments?

Mr. Dunkin: Most of these comments were related to the background sound level. The fact that it wasn’t measured over a full one-week period to get a full picture of what’s happening day and night; weekends vs. weekdays. We were trying to get this study out quickly, and to do a full week of monitoring would have put a significant crunch on that. So, we opted not to do that in this case. I agree that for a full study, we would do that. That’s what we typically do when we don’t have time constraints. Some of the other comments, for example, under facility sound analysis, he mentions that his quick calculation of 63 decibels, which happens to be what I did measure at the property line. About sound levels inside the units, he says that “environmental

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noise studies provide sound level estimates for outside”, that’s true, but we did want to give some insight into what people would be experiencing inside these units, providing a reference for what happens when sound propagates through a window, what other sound sources could exist in the room that compete with these sounds.

Chairman DeYoung: Did you inquire of the hotel owner if you could have access to the interior of the rooms?

Mr. Dunkin: No, we didn’t.

Chairman DeYoung: So, no sound metering was done inside the rooms?

Mr. Dunkin: That’s right. Under General, “This study needs to be done with acoustic modeling software...The study needs to be conducted with frequency-based octave band sound data.” We did both of those things. I used computer modeling to calculate the propagation over the sound barriers. The measurements that I took were done in octave bands. His last point, that the noise wall could potentially reflect sound in the opposite direction, that’s certainly true, but my understanding is that there aren’t any concerns from abutters in the opposite direction. The immediate neighbor on the other side is a restaurant which is clearly a commercial facility.

Public Comments.

Additional Letters of Opposition read into the record:

- Shelby and Jenna Forsthuber
- Vincenza McNulty, 91 Tanglewood Drive
- Donald and Janet Spearance, 16 Tanglewood Drive
- Christine Nougaim, Colonial Acres
- Mary Kocsis, 66 Tanglewood Drive
- Melvin and Donna Bishop, 481 Buck Island Road #14G
- Kent Carlson, 481 Buck Island Road #19A
- Cheryl Ryan, 481 Buck Island Road #10C

Attorney Christopher Senie, Brewster, MA, representing Marilyn Lucht, 481 Buck Island Road #7, and Wagner Quintanilha, the manager of Sunbird Cape Cod Resort at 216-228 Route 28:

A proposal for a full and proper acoustical study prepared by Acentech (Michael Bahtiarian, Acoustical Engineer). When I submitted that proposal to the Board, I was not aware that a study had been put into the record. The Acentech proposal, which would cost \$12,000, my clients are prepared to pay for that, so this Board would have a high-quality study. In addition, Mr. Bahtiarian did a quick critique of the Cavanaugh Tocci study. A few points: There is an attempt to say that the air conditioning units inside the hotel rooms will mask the sound from the go-karts. This is not true. Air conditioning is at a fairly high frequency. The sound pressures coming from go-karts are predominantly low frequency which take more distance to decay than high frequency. Generally low frequency doesn’t mask high frequency. The 4-foot masonry wall (which was not in the plan until this report came in) is claimed to be able to reduce sound pressures emanating from the track by 8-11 decibels. However, this wall is only 4 feet tall, and will not provide any abatement of the sound coming to the second floor of the motel. Line of sight is very important in acoustics. In order for something to constitute an abatement of sound pressures, a mitigating structure needs to block line of sight, and you won’t do that for the second floor. The 4-foot masonry wall will help when go-karts are next to the wall, but when the karts are not near the wall, the sound is going to go over that 4-foot wall. As noted, the wall can

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bounce sound in other directions, causing distress elsewhere. The vinyl fence has no sound mitigation qualities. I've read dozens of these reports, and the standard way to establish ambient sound is to do a 7-day constant reading, to track how the ambient sound goes up/down at different times of the day/night. Standard propagation is done by entering sound power levels into a computer model called "CAD-Net A" and it produces a contour map that shows sound pressures emanating out to the community on all sides. We think you should have science in front of you, not a report that is "cursory". I have read dozens of these reports; none of them say they are "cursory". A very large claim was made by Mr. Dunkin that if a full acoustical study is conducted by Mr. Bahtiarian, the results will be the same. We're prepared to do it. If this matter is continued for any reason, we will pay \$12,000, and deliver a proper study that will not call itself "cursory". It will be a scientific study that lets this Board understand the impacts of the acoustics going out into the community.

Chairman DeYoung: When we get that report, this gentleman [Mr. Dunkin] will provide a contrary analysis, and it will go on ad nauseum. This is going to be decided tonight unless the Board Members believe that we need yet another continuance.

Mr. Healy responds to Attorney Senie's comments:

1) The direct line of sight to the residential units at the Buck Island condominiums: We have a storage trailer and second one behind it. This is why there isn't a wall back here because we felt that trailer would block so much of the sound. The second trailer we could move over here which would do an even better job of blocking sound for the neighborhood. 2) One of the concerns with the Inflatable Park was traffic. Just like the Inflatable Park, this will be busy when most people are on the beach, so you won't have the same traffic on Route 28.

Board Discussion and Deliberation:

Mr. Fraprie: Whether this gets approved or not, I don't think this should operate past dusk, especially with a hotel next door. I question the hours of operation until 10pm at night. From my own research, 10 decibels extra at the property line is excessive.

Mr. Igoe: In order to get a Special Permit, the applicant needs to demonstrate "that no undue nuisance, hazard or congestion will be created and that there will be no substantial harm to the established or future character of the neighborhood or town." I think we've given the applicant ample opportunity to do so. I don't think they've demonstrated that to us tonight or before this. The report that we have received is woefully inadequate. The definition of "cursory" is "hasty and therefore not thorough or detailed". After reading this report, I agree that it's cursory. I think it was done in haste. A lot of assumptions and presumptions. The more I read it, the more I think it's not detailed. Very concerned about the noise. It's not just one or two people in opposition. It's dozens of people in opposition. It's not just the Sunbird. Directly across the street is a residential street, Ken's Way; The Bayside Hotel; The Cove; these could all be affected. I don't think they've met the criteria necessary for a Special Permit and I cannot support this petition.

Chairman DeYoung: It takes a 4-1 vote to grant the relief and I'm not going to vote in favor of the requested relief. I'm really disappointed in the sound analysis that's been brought to us.

Mr. Healy asks for a moment to confer with his client.

Mr. Healy requests to withdraw the petition.

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Chairman DeYoung asks Board Members about going to a vote or allowing the petitioner to withdraw.

Mr. Martin: No matter what goes in there, you're going to need buffers. Go to a vote.

Mr. Igoe: I agree. We've spent a lot of time on this. I know we've been generous with allowing people to withdraw without prejudice, but when we go 2 or 3 times... We went through this a couple of weeks ago with a repetitive petition, after we allowed someone to withdraw and they came right back at us with basically the same thing. Given the amount of time that we've invested in this, Mr. Chairman, I think we should go to a vote.

Chairman DeYoung: Respectfully, Mr. Healy, your request is denied.

Vote:

A motion was made by Mr. Igoe and seconded by Mr. Fraprie to approve the relief requested by the petitioner.

On a roll call vote (5-0), the request for relief was denied.

- Mr. Igoe: NAY
- Mr. Mantoni: NAY
- Mr. Fraprie: NAY
- Mr. Martin: NAY
- Chairman DeYoung: NAY

OTHER BUSINESS:

Minutes: A motion was made by Mr. Martin and seconded by Mr. Fraprie to approve the May 25, 2023 minutes. On a voice vote (5-0), the minutes for May 25, 2023 were approved.

Adjournment: Mr. Fraprie made a motion to adjourn, and Mr. Martin seconded. The June 22, 2023 Zoning Board of Appeals meeting adjourned at 9:50pm.